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RE: Application Serial No. 09/867,687

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Examiner R. Dean
Art Unit 2618
Appl. No. 09/867,687

DISCUSSION OUTLINE FOR TELEPHONE INTERVIEW

U.S. APPLICATION NO. 09/867,687 (P. KESLING)

    1. (Previously Presented) A method for charging advertising fees, comprising the steps of:

    (a) broadcasting an advertisement for a sponsor in a broadcast, wherein the broadcast includes an identifier that uniquely identifies the advertisement and at least one of the sponsor of the advertisement and a product advertised in the advertisement;

    (b) receiving a quantity of electronic indications from persons who observe the advertisement, wherein the indications indicate interest in the product, and wherein the indications reference the identifier; and

    (c) charging the sponsor a fee for broadcasting the advertisement, wherein the fee is based on the quantity of indications that are received , and wherein the indications each reference the identifier.

    Noreen appears to disclose returning particular broadcasted identification information for, e.g., ordering a particular item that has been advertised. As acknowledged in the Office Action, however, Noreen does not disclose anything regarding charging a sponsor a fee based on the quantity of indications that are received.

    For this feature, the Office Action relies on Palmer.

    Palmer discloses a system in which a paging system transmits a URL at substantially the same time as a radio or TV broadcast. The URL is detected by a pager and associated computer program and a browser is *automatically* directed to the received URL. (Emphasis added.) (See col. 5, lines 32-34.) Col. 7, lines 19-27 of Palmer further disclose that home pages may audit the number of "hits" received, and that advertising fees may be based on the number of hits.

    Previously, Applicants argued that even if the recipient of the URL is not interested in the web page or not, the computer's browser is nevertheless automatically directed to the web page (e.g., home page of the advertiser). As a result, the number of "hits" does not, at all, correspond to the number of *actual* interested persons. Claim 1, on the other hand, requires that the received indications "indicate interest in the product."

    In response, the Examiner has now cited to col. 7, lines 27-44 of Palmer as disclosing that the "user has the option of choosing which websites to access and whether or not said user wants to access said websites." (Office Action at p. 2.) The cited passage of Palmer, however, describes how a user might complete a profile such that only certain kinds of URLs (e.g., for coupons, contests, etc.) will be presented to the user. In other words, the user "pre-selects" what types of advertisements he wants to see, and then the computer will automatically access those websites.

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To be clear, the only disclosure of Palmer regarding advertising fees has to do with basing the advertising fees on the number of hits at a website. (See Palmer at col. 7, lines 19-26.) There is no other disclosure of fees in Palmer. Thus, a combination of Noreen and Palmer would necessarily result in a system in which URLs are passed to users and websites are thereafter accessed. But, as explained previously, the website to which the URL is directed does not receive the URL itself. Thus the identifier (i.e., URL) that is broadcast, is not the same identifier that is received by the website.

Also, there is an issue of timing that is at least implied (if not expressly required) in the claims that is not present in the prior art combination. Claim 1, for example, requires that a quantity of indications are received "from persons who observe the advertisement." In Palmer, under the URL pre-selection scenario, it is not at all clear that the user has observed anything since his system is configured to automatically receive certain types of URLs, which will then automatically cause a browser to access an associated website that will then result in a "hit" being counted. Palmer does not disclose that the users actually observe anything before a "hit" is registered. In contrast, the whole purpose of the instant invention is to obtain real feedback from real people (i.e., the claim recites "from persons") so that advertising fees can be properly assessed. (See, e.g. paragraph [0078], which discusses the number of select buttons pushed "during the airing of an advertisement.")

This latter "from persons" point is also relevant to first argument above, wherein Palmer discloses only automated access to websites, whereas the claims require user initiation.

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